

APPEAL NO. 032942  
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on October 6, 2003. In (Docket No. 1), the hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. In (Docket No. 2), the hearing officer determined that the claimant is entitled to SIBs for the third quarter. The appellant (carrier) appealed the determination that the claimant is entitled to SIBs for the third quarter. The claimant responded, asserting that the carrier's request for review was untimely and should not be considered. The hearing officer's determination that the claimant is not entitled to SIBs for the first and second quarters has not been appealed and has become final. Section 410.169.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Since it is jurisdictional, we first address the question of the timeliness of the claimant's appeal. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was received by the carrier on October 17, 2003. Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The carrier mailed its request for review to the Commission postmarked November 5, 2003, and the Commission received it on November 10, 2003. Thus, since the carrier mailed its request for review to the Commission within 15 days (15th day was November 7, 2003), and it was received within 20 days (20th day was November 17, 2003), of the date the carrier received the hearing officer's decision, the carrier's request for review is timely. See Section 410.202(a); Rule 143.3(c).

The requirements for entitlement to SIBs are set out in Section 408.142 and in Rule 130.102. The parties stipulated that the claimant sustained a compensable right hand injury on \_\_\_\_\_; that the claimant has a 29% impairment rating; and

that the qualifying period for the third quarter of SIBs was from April 5 through July 4, 2003. With regard to the required "good faith effort," the hearing officer was satisfied that the claimant proved that he made a good faith effort to obtain employment commensurate with his ability to work during every week of the qualifying period at issue and that he documented his job search efforts. See Rule 130.102(d)(5)(e). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established (Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). Nothing in our review of the record reveals that the hearing officer's good faith determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse that determination, or the determination that the claimant is entitled to SIBs for the third quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge